IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1222 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the Civil Judge? : YES

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MANJULA P SHAH

Versus

GOVT. OF INDIA

Appearance:

1. Special Civil Application No. 1222 of 1998

MR AJAY R MEHTA for Petitioner No. 1

MR ASIM J PANDYA for Respondent No. 1,2-3

MR UI VYAS for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 03/07/2001

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner has prayed for a writ of mandamus directing the respondents, i.e. Government of

India, Regional Director, Gujarat Region National Savings Organisation and the Deputy Regional Director of the said organisation at Ahmedabad to renew the petitioner's agency under "Mahila Pradhan Kshetriya Bachat Yojana ('Yojana' or 'Scheme' for brevity) with effect from 7.3.1996 onwards.

2. The Government of India had launched a scheme called Mahila Pradhan Kshetriya Bachat Yojana with effect from 1.4.1972 in order to, interalia, educate the housewives and secure investments, raise resources for financing development and defence of the country. Under the said scheme, amongst others, an individual woman of any locality can be appointed, upon recommendation of the District Savings Officer of the area, as an authorised agent leader for that particular locality. The petitioner applied for becoming the agent leader in the year 1981 and, accordingly, respondent No.2 appointed the petitioner as the agent leader for Idar area vide certificate dated 7.3.1981. An agreement to that effect was also executed between the petitioner and respondent No.1, and the said agreement has been signed by respondent No.2 on behalf of respondent No.1. The petitioner, accordingly, started functioning as the agent under the Scheme within Idar area. The petitioner was functioning as per the guidelineas and terms and conditions of the scheme, and the petitioner was being paid commission on the savings secured by the petitioner and deposited with the respondents.

3. It is the case of the petitioner that in the second week of December 1995, the petitioner was called by the Post Master, Idar, and was informed that as per the letter/circular issued by the respondent-authorities, the petitioner was required to apply for renewal of the Yojana agency every three years, and the petitioner was, accordingly, advised to apply immediately. Even though the said condition was not a part of the agreement, the petitioner applied for renewal of her agency to respondent Nos 2 and 3 on 12.12.1995, and by letter dated 18.1.1996 respondent No.3 granted the renewal of agency. A copy of the said renewal letter dated 18.1.1996 is produced at Annexure "B" to the petition which reads as under:

Dtd.18.1.96

"To

Smt.Manjula P.Shah,

Matawali Fali, Idar (Dist.Sabarkantha)

Sub: Renewal of M.P.K.Y.Agency

Madam,

Enclosed please find herewith Certificate of Authority No.G/MPK/SK/73, dated 7.3.81 duly renewed for the further period of three years.

The above mentioned Certificate of Authority is valid upto 6.3.1996.

Yours faithfully,
Sd/x,
Dy.Regional Director,
N.S.Gujarat"

(Emphasis supplied)

4. The petitioner's case is that because the renewal letter was issued on 18.1.1996 the petitioner was under a bonafide belief that the renewal of agency would operate till 17.1.1999. However, respondent No.3 did not pay the petitioner commission from September, 1996 onwards. When enquired, the petitioner was informed that since the petitioner's agency was renewed only till 6.3.1996, the petitioner can not be treated to be the agent under the Scheme and, therefore, the commission can not be paid. The petitioner tried to persuade the authorities that since the letter was issued on 18.1.1996 the renwal should be treated as valid till 17.1.1999, but to err on the safer side, the petitioner submitted an application for renewal on 31.3.1997, and the petitioner continued to work as an agent under the Scheme, secured investments and deposited them with the Post Master, Idar, and the Post Master, Idar continued to accept the deposits. Respondent No.2 sent letter, dated 15.10.1997 expressing inability to renew the agency with retrospective effect and asked the petitioner to refund the commission paid to her. The petitioner had applied for renewal of the agency, but the respondents did not grant any such renewal and, therefore, the petitioner was constrained to file the present petition in February, 1998.

5. While issuing notice this Court directed the respondents to continue to accept the deposits through the petitioner and observed that the question of paying commission to the petitioner will be considered subsequently.

6. In response to the notice, affidavit-in-reply has been filed by the Regional Director, National Savings Organisation-respondent No.2 herein, contending that since the agency was renewed only till 6.3.1996, and the

petitioner did not apply for renewal before expiry of validity period, the petitioner seizes to be the agent and, therefore, if at all the petitioner is desirous of being granted the agency under the Scheme, the petitioner will have now to apply afresh.

7. At the hearing of this petition, Mr.Mehta, learned advocate for the petitioner has submitted that the Scheme was evolved for educating housewives, securing investments and raising resources for financing the development and defence of the country. It was, therefore, known to the respondents that the agents would be housewives who could not be expected to be wellversed with the technical niceties as contained terms and conditions in the agreement and the petitioner was under a bonafide belief that the renewal of agency made by letter dated 18.1.1996 would be for a period of three years as was explained to her by the respondent No.3 in December, 1995. Hence, the petitioner bonafide beleived that the agency was renewed till 17.1.1999. It is further submitted that, in any view of the matter, when the respondents were not granting the renewal, to err on the safer side, the petitioner, again, applied for renewal of agency on 31.3.1997 and, hence, the respondents ought to have considered the same and granted renewal to the petitioner agency with effect from 6.3.1996 onwards.

8. On the other hand, Mr.Vyas, learned advocate for the respondents vehemently opposed this petition and submitted that since the agency was renewed only till 6.3.1996, and the petitioner was required to apply for renewal before the expiry of valid period of agency, and once the petitioner failed to apply for renewal of agency before 6.3.96, and when the agency came to end, thereafter she had no right to get the agency renewed and if at all the petitioner was desirous of applying for fresh agency, she ought to have applied for fresh agency and is not entitled to have renewal of agency.

Mr.Vyas has also relied on two decisions of learned single Judge of this Court.

9. Having heard the learned counsel for the parties, it appears to the Court that the respondents have come out with the case that the agency was to be renewed only for a maximum period of three years at a time. They have also stated in the reply affidavit that by letter dated 18.1.1996 the petitioner's agency was renewed on

3.11.1995 upto 6.3.1996. If the authority had the power to renew the agency for a period of three years, no explanation is offered as to why renewal of the agency on 3.11.1995 was restricted upto 6.3.1996 when the original agreement did not stipulate any period. It is not the case of the respondents that the petitioner was guilty of any irregularity, illegality or misconduct while functioning as an agent under the Scheme. The renewal of agency is sought to be denied to the petitioner only on the ground that the petitioner applied for renewal on 31.3.1997, i.e. after expiry of the agency period. As already stated above, since the renewal letter dated 18.1.1996 was after the petitioner was informed that the renewal of agency would be valid for three years only, the petitioner bonafide proceeded on the footing that the renewal would be valid till 17.1.1999. It is true that the letter mentioned that renewal was valid upto 6.3.1996, but then the petitioner was trying to persuade the respondent-authorities to treat the renewal of agency as valid, interalia, on the ground that the initial agreement did not contain any maximum period of agency and also on the ground that the renewal letter issued by the authority has power to grant renewal and the letter for three years was issued on 18.1.1996, the authorities ought to have considered the petitioner's application dated 31.3.1997 for renewal of agency with effect from 6.3.1996. Though Clause No.3 in agreement requires the agent to apply for renewal before the expiry of the period, there is no embargo on the power of the authority to exercise its power or discretion in a reasonable manner, more particularly, the scheme itself contemplates that the agency is to be given to housewives and they should not be expected to be so wellversed with the details of the agreement. Nothing is to be lost by the respondents by granting renewal retrospectively and when the petitioner has to be paid commission only for the investments brought through her, it would be unreasonable and arbitrary on the part of respondents not to consider the petitioner's application for renewal with effect from 6...3.1996 especially when there is no allegation of irregularity,illegality or misconduct against the petitioner.

10. The reliance placed by the learned counsel for the respondents on the decision dated 30.8.1996 of this Court in Special Civil Application No.2700/85 is misconceived as in that case the agent had expired and, therefore, the question of renewal did not survive.

11. As far as the decision dated 13.8.1996 of this Court in Special Civil Application No.3365/83 is concerned, it is true that this Court has held that an agent is not vested with a fundamental right for renewal of agency. Question in the instant case is not whether the petitioner had a fundamental right for renewal of agency or not. The question is whether the respondents were acting unreasonably and arbitrarily in not granting the petitioner's application for renewal of agency when the petitioner was acting as an agent since 1981 and there was a bonafide ground available to the petitioner for continuation of agency whether the agency was renewed already for a period of three years with effect from 18.1.1996 or whether the agency was renewed upto 6.3.1996. No legal provision is shown to indicate that the respondents would be committing any illegality if the petitioner's agency is renewed with effect from 6.3.96 in pursuance of the petitioner's application dated 31.3.97. The authorities are expected to act in a reasonable and pragmatic manner when the petitioner has not committed any illegality, irregularity or misconduct.

12. While issuing notice this Court had observd that the question of paying commission to the petitioner will be considered subsequently. Since the petitioner has brought investments to the respondents, but for the dispute about renewal of the agency, the petitioner would have been entitled to claim commission thereon. Hence, this Court sees no reason not to direct the respondents to pay the commission to the petitioner for the investments brought through her.

13. In view of the above discussion, this petition is allowed, and the respondents are directed to consider the petitioner's application for renewal of agency under the Scheme called "Mahila Pradhan Kshetriya Bachat Yojana" with effect from 6.3.1996 onwards in light of the observations made in this judgment.

The respondents are directed to release the commission to the petitioner under the Scheme for the investments brought through her without raising any objection about renewal of the agency for the period after 6.3.1996.

These directions are to be complied with by the respondents within a period of two months from the date of receipt of the writ of this Court, or from the date of

receipt of a certified copy of this judgment, whichever is earlier.

Rule is made absolute accordingly with no order as to costs.

3.7.2001 (M.S.SHAH,J)
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